

State Certification and Cost Recovery Rules for Nuclear Facilities

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Issue Overview

- What authority do state commissions or other regulatory agencies have to review proposals for the construction of new nuclear facilities?
- What rules govern the recovery of costs associated with the planning, construction, and operation of new nuclear facilities?

State Commission Procedures

- State commissions must address these issues in compliance with the procedural requirements set forth in state law
- Typically, state commissions make decisions following adversary proceedings in which interested parties have a right to present evidence and to otherwise advocate the adoption of the positions that they espouse
- State commissions must make their decisions on the basis of an analysis of the evidentiary record in light of controlling legal principles
- State commission decisions are subject to appeal to the appellate courts in the relevant state

Status of State Regulation

- States divided in the manner in which the electric industry is regulated
- Sixteen states and the District of Columbia have restructured their electric industries in an attempt to convert the generation function into a competitive business
- Remaining states have retained the traditional industry model, in which utilities that have been awarded monopoly territories provide bundled service to end user customers

Traditional Regulation

- Utility is assigned a franchised service territory in which it has the exclusive right to provide retail service
- Utility is obligated to provide adequate service at a reasonable rate in its franchised service territory
- Utility is subject to pervasive rate and service quality regulation by a state regulatory agency for the purpose of protecting customers

Traditional Rate Regulation

1. Ascertain the utility's rate base, which consists of the reasonable cost of the utility's property used and useful in providing utility service, less accumulated depreciation
2. Determine the appropriate debt and equity capital cost rate that the utility should be allowed to collect from customers
3. Multiply the utility's rate base as determined in Step 1 by the capital cost rate established in Step 2
4. Ascertain the utility's reasonable operating expenses, including salaries, depreciation, and similar costs
5. Add the utility's allowable aggregate capital costs as determined in Step 3 to the utility's allowable operating expenses as determined in Step 4 to produce the utility's total revenue requirement
6. Design rates to allow the utility to collect its overall revenue requirement as determined in Step 5 from customers in a non-discriminatory manner

Electric Restructuring

- Attempts to assure adequate generation service at reasonable prices by using competitive forces rather than regulatory oversight
- Allows entry by non-utility entities into the generation business
- Requires utility to provide delivery service to customers subject to regulatory control
- Allows customers to purchase generation service on the open market at prices set by market forces
- Requires some entity, usually the incumbent utility, to serve as provider of last resort for those customers that do not or are unable to shop for power

Establishing the Cost of Generation Service in Restructured States

- Customers in restructured states that elect to shop for power pay a market-based price
- Most residential customers in restructured states receive default service
- Default service priced in different ways in different states, with some states retaining traditional regulation for default service and others acquiring generation service for default customers through an auction process

Certification Requirements in Traditionally-Regulated States

- State law in traditionally-regulated jurisdictions requires a utility to obtain a certificate from a state agency before beginning to construct and operate a generating facility
- Utility is required to show that the proposed facility is needed to meet anticipated future load and represents the least cost way to serve that anticipated load
- Purpose of certification in traditionally-regulated states is to prevent costly-overbuilding

Certification Requirements in Restructured States

- Extent to which certification requirements persist in restructured states varies from jurisdiction to jurisdiction
- Illinois does not require non-utility generators to obtain a certificate before constructing a new generating facility
- Virginia appears to lighten the standard required for certification of a generating facility that will not be included in utility rate base

Cost Recovery Under Traditional Regulation

- Costs associated with a new generating facility eligible for use in establishing rates when the facility becomes commercially operable
- Capital costs, including an allowance for funds used during construction, are included in establishing the utility's rate base
- Operating expenses, including depreciation, included in establishing allowable operating expenses
- Certain costs may be disallowed in the event that any portion of the plant's capacity is determined to be excessive or any costs incurred in constructing the facility were unreasonably or imprudently incurred

Cost Recovery in a Restructured Environment

- Generators recoup costs associated with the provision of service to customers that shop for power in the market-based prices charged to those customers
- Generators recoup costs associated with serving default customers through the mechanism approved by the applicable state commission for the provision of such service
 - In Michigan, default service is priced in a manner reminiscent of cost-based regulation
 - In Pennsylvania, utilities providing default service procure generation through an RFP process, so that the cost of generation is incorporated into each generator's bid
 - In Maryland and New Jersey, the price of default service is determined through an auction process, so that the cost of generation is incorporated into each generator's bid

Impact of Regional Transmission Organizations on Cost Recovery

- Regional Transmission Organizations that operate day-ahead and real-time generation markets exist in the Mid-Atlantic, Midwest, New England, New York, and Texas
- RTO areas contain both restructured and traditionally-regulated states
- Utilities and other customers have the option of purchasing power through RTO markets instead of operating their own generating facilities or obtaining power from other sources
- Price of power sold through RTO markets is based on bids submitted by participating generators, with all generators receiving the price paid to the generator with the highest accepted bid
- Marginal generation in RTO markets tends to be gas-fired or coal-fired, resulting in prices for power purchased through such markets that exceed the marginal operating cost of nuclear generation

Other Cost Recovery Mechanisms

- Other options for the recovery of costs associated with designing, licensing, constructing, and operating new nuclear units exist in certain traditionally-regulated states
- Some states permit the inclusion of construction work in progress in rate base
- Other states have adopted or are considering other cost recovery mechanisms in anticipation of new nuclear construction

Iowa

- Iowa Utilities Board may determine “in advance” “the ratemaking principles that will apply when the costs of an electric generating facility . . . are included in regulated electric rates”
- Approach only applicable to facilities “with a nameplate generating capacity equal to or greater than three hundred megawatts”
- IUB not “limited to traditional ratemaking principles or traditional cost recovery mechanisms” in determining the appropriate method for cost recovery in such instances
- Cost recovery issues associated with new generating facilities must be resolved before construction can begin

Florida

- Florida PSC is required to approve an alternative cost recovery mechanism for costs resulting from the construction of a new nuclear facility that allows for recovery of preconstruction costs and carrying costs on the utility's projected construction cost balance
- Any utility that brings a new nuclear unit into commercial operation is entitled to include the projected cost of such a facility in base rates using the utility's existing allowed return
- In any ratemaking proceeding in which a utility seeks to include the costs associated with a new nuclear generating unit in rates
 - Otherwise applicable competitive bidding rules do not apply
 - Issuance of a determination of need creates a presumption that the facility is needed to provide service to the public
 - Costs associated with the construction of the facility in question can only be disallowed for imprudence, with a decision to proceed with construction following a determination of need conclusively presumed to be prudent and with any cost increases due to events beyond the utility's control not subject to disallowance

Georgia

- Georgia PSC has allowed Georgia Power to accumulate up to \$51 million in costs associated with efforts to obtain an Early Site Permit and a Combined Operating License in Account 183, Preliminary Survey and Investigation Charges
- Upon certificate of a new nuclear generating facility by the Georgia PSC, the amounts recorded in Account 183 shall be transferred to a CWIP account
- In the event that a new nuclear facility is not certified, the prudently incurred amounts in Account 183 shall be deferred until the utility's next general rate case, at which point the Georgia PSC will determine the appropriate ratemaking treatment for those costs

North Carolina

- Duke Energy Carolinas has requested the North Carolina UC in a pending proceeding to
 - Find “that work performed . . . to ensure the availability of nuclear generation by 2016 is prudent and consistent with the promotion of adequate, reliable and economical utility service to the citizens of North Carolina” and the policies expressed in the North Carolina Public Utilities Act
 - Provide “expressly that Duke Energy Carolinas may recover in rates, in a timely fashion, the North Carolina allocable portion of Development Costs prudently incurred for work done in the development of new nuclear generation through December 31, 2007, whether or not a new nuclear facility is constructed”